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FOURTEENTH ANNUAL REPORT

OF THE

BOARD OF REGISTRATION IN MEDICINE.

FOR THE YEAR ENDING DEC. 31, 1907.

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Commonwealth of Massachusetts.

Board of Registration in Medicine,
State House, Dec. 31, 1907.

To His Excellency Curtis Guild, Jr., *Governor.*

Sir: — We have the honor to present the fourteenth annual report of this department.

Financial Statement.

Expenditures.

Services of members of Board,	$4,300 00	
Incidental expenses of Board,	423 37	
Investigation of complaints,	135 61	
Clerical service,	780 00	
Printing and material,	234 64	
Books and other office supplies,	223 90	
Postage, expressage and telephone,	153 18	
		$6,250 70

Receipts.

Fees paid into the treasury of the Commonwealth, from 315 applicants,	$6,300 00

The number of persons applying for registration during the year is 315, all of whom have been examined except 5. Of the number applying, 278 are graduates from medical schools authorized to confer degrees in medicine, and 37 were non-graduates. The percentage of graduates registered on first examination is 76, and of non-graduates 16+. The percentage of both graduates and non-graduates registered during the year is 60. The percentages in each examination are stated in the following tabulations: —

Graduates and Non-graduates.	Examined.	Registered.	Rejected.	Percentage rejected.
March examination,	68	40	28	41
May examination,	54	31	23	42
July examination,	142	93	49	34
September examination,	50	30	20	40
November examination,	84	48	36	43
	398	242	156	40

Graduates.	Examined.	Registered.	Rejected.	Percentage rejected.
March examination,	51	37	14	27
May examination,	42	31	11	26
July examination,	123	90	33	26
September examination,	47	29	18	38
November examination,	69	48	21	30
	332	235	97	29

Non-graduates.	Examined.	Registered.	Rejected.	Percentage rejected.
March examination,	17	3	14	82
May examination,	12	–	12	100
July examination,	19	3	16	84
September examination,	3	1	2	67
November examination,	15	–	15	100
	66	7	59	89

The following tabulated data apply only to results in first examination of graduation : —

Medical Institutions.	Number Examined.	Number Registered.	Year of Graduation of Rejected Applicants.
Tufts,	51	46	1898–1906–07–07–07.
Harvard,	50	49	1907.
Baltimore Medical,	23	11	1902–05–05–05–06–06–06–07–07–07–07–07.
Massachusetts College of Osteopathy,	19	11	1906–06–06–07–07–07–07–07.

Medical Institutions.	Number Examined.	Number Registered.	Year of Graduation of Rejected Applicants.
Physicians and Surgeons, Boston,	16	9	1905-05-06-07-07-07-07.
Boston University,	14	13	1907.
University of Vermont,	13	11	1906-06.
Dartmouth,	9	8	1893.
Jefferson,	8	8	
Foreign,	7	4	1889-96-1902.
Laval,	7	2	1901-04-05-06-07.
Woman's Medical, Pennsylvania,	6	4	1902-04.
Baltimore University,	6	–	1903-03-04-06-06-07.
Physicians and Surgeons, New York,	5	5	
Physicians and Surgeons, Maryland,	4	2	1907-07.
Hahnemann, Pennsylvania,	4	3	1907.
McGill,	4	4	
Johns Hopkins,	3	3	
Yale,	3	3	
University of Georgetown,	3	3	
Cornell,	3	3	
American School of Osteopathy,	3	3	
Medical School of Maine,	2	2	
Bellevue Hospital Medical,	2	2	1899.
University of Pennsylvania,	2	1	
University and Bellevue Hospital,	2	2	
University of Michigan,	1	1	
Maryland Medical,	1	–	1907.
University of the South,	1	–	1905.
Kentucky School of Medicine,	1	–	1906.
University of Maryland,	1	1	
Long Island College Hospital,	1	1	
National Medical University,	1	–	1904.
Physicians and Surgeons, St. Louis,	1	–	1906.
American Medical Missionary,	1	–	1902.
Howard University,	1	1	
George Washington University,	1	–	1907.
Barnes Medical,	1	–	1900.
Physicians and Surgeons, Chicago,	1	–	1905.
Medico-Chirurgical, Pennsylvania,	1	–	1905.
University College of Medicine, Virginia,	1	1	
Northwestern University,	1	1	

Tabulation showing number and average rating of graduates from the following medical schools, represented by not less than three applicants : —

Medical Institutions.	Number examined.	Average Rating.
Tufts,	51	77.7
Harvard,	50	80.4
Baltimore Medical,	23	73.0
Massachusetts College of Osteopathy,	19	71.4
Physicians and Surgeons, Boston,	16	72.1
Boston University,	14	78.1
University of Vermont,	13	76.9
Dartmouth,	9	76.5
Jefferson,	8	75.2
Foreign,	7	60.0
Laval,	7	64.2
Woman's Medical, Pennsylvania,	6	77.4
Baltimore University,	6	58.6
Physicians and Surgeons, New York,	5	82.9
Physicians and Surgeons, Baltimore,	4	77.0
Hahnemann, Pennsylvania,	4	76.7
McGill,	4	81.8
Johns Hopkins,	3	82.0
Yale,	3	79.3
University of Georgetown,	3	79.1
Cornell,	3	81.9
American School of Osteopathy,	3	75.2

Applicants are admitted to examinations by an " examination ticket, " showing the date of the examination and the holder's number. Tickets are issued to applicants at the time of filing their applications ; also to rejected applicants entitled to a re-examination, if applied for not later than five days before the examination date. Examinations are conducted in writing, in the English language only. Incognito ratings are insured by the requirement that applicants in designating their answer papers shall use their application number only.

The three examinations in a year, provided by law, begin respectively on the second Tuesday in March, July and

November. Special meetings for conducting examinations have been held this year in May and September, as in previous years.

The time devoted to each examination is three days. In each of the examinations 70 questions are asked, grouped in sets of 7. Answers are rated on a scale of 0 to 100, and examinations are classed as unsatisfactory when general averages fall below 75 per centum.

The questions are intended to be practical, and to cover substantially the instruction given in the medical schools in this country in a four-years course. The subjects on which the examinations are principally conducted are anatomy and histology, physiology and hygiene, pathology and bacteriology, surgery, obstetrics and gynæcology, diagnosis and therapeutics, and pediatrics and toxicology.

The aim of the Board is to conduct its examination work in a manner best adapted for determining the qualifications of applicants. Its practice is to conduct the examination of recent graduates and non-graduates wholly in writing. Applicants coming from without the Commonwealth, who furnish satisfactory evidence of having conducted a reputable practice for not less than ten years, may be admitted to a mixed examination, largely oral. It is the belief of the Board that such an examination for practitioners of several years' standing is best adapted to meet the requirements of the law, and is far more likely to be just.

Previous to last year the Board admitted applicants who had received their medical training in foreign schools, and who could not speak or write in other than their native language. Such applicants were allowed to write their papers in their own language, on condition that they would pay for the cost of translations secured by the Board for the purpose of rating; but there being some doubt as to the legality of examinations conducted in this manner, the opinion of the Attorney-General of the Commonwealth was requested. His opinion, printed in the Appendix, being adverse to such procedure, only those who can write in English are admitted to the examinations.

Since the organization of this department, in July, 1894,

the Board has issued 8,286 certificates of registration. Of this number, 3,792 were issued prior to January, 1895, during the six months next following the organization of the Board, to physicians practising in the Commonwealth at the time the registration act became in part operative. There were 608 persons refused registration during the six months above referred to, they being unable to meet the requirements of the law as to graduation, or as to three years of continuous practice in this Commonwealth next prior to the passage of the law.

The work of registration under written examinations, conducted by the Board as required by law, began with the year 1895. Since that time the Board has given 6,137 individual examinations, and has issued 4,491 certificates of registration, — an annual average of 322. The number of unsatisfactory examinations during this period is 1,646, — an annual average of 126.

The number of names now on the official list published under another cover is 7,635. The difference between the number of names in the official list and the number of certificates of registration issued represents the number (651) of registered persons who have died since the organization of the Board. It should not be understood, however, that the number of names in the published list represents definitely the number of practitioners in the Commonwealth at the present time. A considerable number are practising in other States, where they have secured registration. The approximate number of physicians in the Commonwealth is 6,000, — a ratio of 1 to 500 of the inhabitants.

The law provides for the examination of undergraduate applicants. Were it not for this fact, the Registration Board would be able to exercise a far greater influence on medical schools as to their entrance requirements and the completeness of their courses of instruction.

One of the chief functions of the examining boards of the country is to upbuild the medical school, to exert their influence for the creation of higher standards therein, so that only those who can successfully accomplish in the school, tests of high scientific work shall be permitted to offer themselves as

candidates for professional service. This subject was fully discussed in the last annual report of the Board, and before the legislative committee on public health, but all attempts to secure alterations in the law failed through adverse action in the House of Representatives on a favorable report of the committee. The Board feels that it would indeed be remiss in its duty to the public should it not again call the attention of the Legislature to this important matter, and again recommend the enactment of an amendment to the registration act, requiring applicants for a license to practise medicine to furnish satisfactory evidence of having graduated from, or at least as having completed in a satisfactory manner a four-years course of study in, a chartered school of medicine as a prerequisite of admission to an examination. In discussing the importance of such a prerequisite the Board last year said : —

> Persons who have not pursued even a partial course of study in a reputable medical school, who have had no clinical instruction, who know nothing of laboratory demonstrations and who have had no practical experience in the hospital, are permitted to take the Board examination in this State. Such applicants, simply from a superficial knowledge derived from medical compends, or by memorizing hand-books of answers to questions asked or likely to be asked by an examining board, may occasionally succeed in passing an appropriate examination before any State Board, and yet be grossly unfit to assume the responsibilities of a physician.

In other respects the law should be amended. The courts are at variance in their interpretation of the intended meaning of section 8, also of section 9. For instance, one court has ruled in an important case that section 9 exempts osteopathic physicians outright from the provisions of section 8. Other courts, superior and municipal, have ruled otherwise. In view of these facts, the Board recently asked the Attorney-General of the Commonwealth for an opinion of the proper interpretation of the sections in question. (See Appendix.)

Just what constitutes the practice of medicine, or holding one's self out as a practitioner of medicine, is clearly set forth in the medical practice laws of nearly all of the other States. Such definitions have their advantages ; possible misinterpretations of the intended meaning of the law are thereby avoided ; its administration is simplified, and more certain as to

results; and violations of it are less likely to occur. An amendment to the law, drawn substantially as follows, is earnestly recommended: —

Any person shall be regarded as practising medicine within the meaning of section eight of chapter seventy-six of the Revised Laws who shall publicly assume or advertise any title or designation which shall show or tend to show that the person publicly assuming or advertising the same, is a practitioner of medicine in one or more of its branches; or who shall investigate or diagnosticate physical ailments, defects or conditions of any person, with a view to treat or modify the same, or does treat or modify the same, by use of instruments or external appliances or manipulations, or by the administration of remedial substances for either internal or external effect.

Clearly, it was not the intention of the Legislature to exempt the several classes of persons mentioned in the last part of section 9, beginning with the word "nor" in the seventeenth line, from the general provisions of the law only so far as they may be able to perform certain functions without infringing upon the terms of section 8. It is well understood that there are certain acts relating to the treatment of the sick which osteopaths, so called, or massagists, etc., may perform without holding themselves out as practitioners of medicine. For instance, rendering certain services to the sick, or administering treatment generally under the direction of, or as advised by, attending physicians. But such services do not require the sanction of law. Inasmuch, therefore, as the part of section 9 referred to does not confer special rights or privileges upon the classes mentioned, its repeal is recommended, in order to avoid possible misapprehensions regarding it.

For the text of the law relating to registration of physicians, and opinions of courts and of the Attorney-General, see Appendix.

Respectfully submitted,

C. EDWIN MILES, *Chairman.*
EDWIN B. HARVEY, *Secretary.*
WALTER P. BOWERS.
SAMUEL H. CALDERWOOD.
AUGUSTUS L. CHASE.
NATHANIEL R. PERKINS.
AUGUSTUS C. WALKER.

APPENDIX.

APPENDIX.

Law relating to the Registration of Physicians.

[Revised Laws, Chapter 76, Sections 1-9.]

Section 1. There shall be a board of registration in medicine consisting of seven persons, residents of this commonwealth, who shall be graduates of a legally chartered medical college or university having the power to confer degrees in medicine, and who shall have been for ten years actively employed in the practice of their profession. No member of said board shall belong to the faculty of any medical college or university, and no more than three members thereof shall at one time be members of any one chartered state medical society. One member thereof shall annually in June be appointed by the governor, with the advice and consent of the council, for a term of seven years from the first day of July following.

Section 2. Said board shall hold regular meetings on the second Tuesday of March, July and November in each year, and additional meetings at such times and places as it may determine. At the regular meeting in July, it shall organize by the choice of a chairman and secretary who shall hold their offices for the term of one year. The secretary shall give a bond to the treasurer and receiver general in the penal sum of five thousand dollars, with sufficient sureties to be approved by the governor and council, for the faithful performance of his official duties.

Section 3. Applications for registration shall be made upon blanks to be furnished by the board, and shall be signed and sworn to by the applicants. Each applicant for registration shall furnish satisfactory proof that he is twenty-one years of age or over and of good moral character and, upon payment of a fee of twenty dollars, shall be examined by said board. If he is found by four or more members thereof to be twenty-one years of age or over, of good moral character and qualified, he shall be registered as a qualified physician and shall receive a certificate thereof signed by the chairman and secretary. An applicant who fails to pass an examination satisfactory to the board, and is therefore refused registration, shall be entitled within one year after such refusal to a re-examination at a

meeting of the board called for the examination of applicants, without the payment of an additional fee; but two such re-examinations shall exhaust his privilege under his original application. Said board, after hearing, may by unanimous vote revoke any certificate issued by it and cancel the registration of any physician who has been convicted of a felony or of any crime in the practice of his profession. All fees received by the board shall, once in each month, be paid by its secretary into the treasury of the commonwealth.

[SECTION 4.[1] Each member of the board shall receive ten dollars for every day actually spent in the performance of his duties, and the necessary travelling expenses actually expended in attending the meetings of the board, not exceeding three cents a mile each way. Such compensation and the incidental and travelling expenses shall be approved by the board and paid by the commonwealth only from the fees paid over by the board.]

SECTION 5. The board shall keep a record of the names of all persons registered hereunder, and of all money received and disbursed by it, and a duplicate thereof shall be open to inspection in the office of the secretary of the commonwealth. Said board shall annually, on or before the first day of January, make a report to the governor of the condition of medicine and surgery in this commonwealth, of all its official acts during the preceding year and of its receipts and disbursements.

SECTION 6. The board shall investigate all complaints of the violation of the provisions of section eight, and report the same to the proper prosecuting officers.

SECTION 7. Examinations shall be wholly or in part in writing in the English language, and shall be of a scientific and practical character. They shall include the subjects of anatomy, surgery, physiology, pathology, obstetrics, gynecology, practice of medicine and hygiene, and shall be sufficiently thorough to test the applicant's fitness to practise medicine.

SECTION 8. Whoever, not being lawfully authorized to practise medicine within this commonwealth and registered as aforesaid, holds himself out as a practitioner of medicine, or practises or attempts to practise medicine in any of its branches, or whoever practises medicine or surgery under a false or assumed name, or under a name other than that by which he is registered, or whoever personates another practitioner of a like or different name, shall, for each offence, be punished by a fine of not less than one

[1] Repealed by the Acts of 1902, and fixed salaries established.

hundred nor more than five hundred dollars, or by imprisonment for three months, or by both such fine and imprisonment. In a case in which a provision of this or the preceding section has been violated, the person who committed the violation shall not recover compensation for services rendered.

Section 9. The provisions of the eight preceding sections shall not be held to discriminate against any particular school or system of medicine, to prohibit medical or surgical service in a case of emergency, or to prohibit the domestic administration of family remedies. They shall not apply to a commissioned medical officer of the United States army, navy or marine hospital service in the performance of his official duty; to a physician or surgeon from another state who is a legal practitioner in the state in which he resides, when in actual consultation with a legal practitioner of this commonwealth; to a physician or surgeon residing in another state and legally qualified to practise therein, whose general practice extends into the border towns of this commonwealth, if such physician does not open an office or designate a place in such towns where he may meet patients or receive calls; to a physician authorized to practise medicine in another state, when he is called as the family physician to attend a person temporarily abiding in this commonwealth; nor to registered pharmacists in prescribing gratuitously, osteopathists, pharmacists, clairvoyants, or persons practising hypnotism, magnetic healing, mind cure, massage, Christian science or cosmopathic method of healing, if they do not violate any of the provisions of section eight.

Commonwealth *v.* St. Pierre.

This is a case in which a person in Fall River was accused of practising medicine without registration. His professional sign was that of an "eye specialist." He was sentenced in the municipal court to three months' imprisonment and to pay a fine of five hundred dollars, the maximum penalty. The case was carried to the superior court, where sentence was sustained; but certain exceptions were taken by the defendant's counsel to the rulings of the court. The exceptions were finally disposed of in the following opinion of the supreme judicial court, rendered on the thirteenth day of December, 1899: —

Loring, J. The exception to the exclusion of testimony offered by the defendant on cross-examination must be sustained. The government had introduced in evidence testimony of a number of persons to the effect that

they had visited the defendant at various times; that he gave to them medicines, and advised them how to use them; that at these times they had conversations with him about the nature of their complaints; that he afterwards visited some of them at their houses and treated them there, and that they paid him money; and the bottles and packages, which the witnesses testified were given to them, had been put in evidence.

The defendant offered to prove that "each and every occasion at the time the parties were told by the defendant that he was not a doctor, and that he did not charge anything for his services." This evidence was excluded.

If the defendant sold the medicines, receiving payment therefor, and gave advice gratuitously as to the use to be made of them, he was not, so far as those instances were concerned, holding himself out as a physician; his declarations accompanying the acts and showing the character of them were admissible as part of the *res gestæ*.

Of course it was open to the government to contend that in these instances he was really acting as a physician, and was paid as such for his services, and that these statements were efforts to evade the statutory provisions here in question.

But when the Commonwealth put in testimony to the effect that he had given directions and advice as to the use of the contents of the packages and bottles sold by him, and had been paid by the persons to whom the contents were sold, it was the right of the defendant to prove that in each instance he was paid not for the advice but only for the drugs, and that he declared that he was not a physician; and in that way to raise the question whether, so far as these instances were concerned, he was selling the drugs and giving information gratuitously as to their use, and therefore not thereby holding himself out as a physician, or whether he was really acting as a physician, taking payment therefor, and was seeking by such declarations to evade the effect of his actions. This question was a question for the jury, under all circumstances, and the testimony offered should have been admitted.

As the questions involved in the other exceptions may arise in a new trial, they may be briefly disposed of here: —

2. The burden was on the defendant to show that he was a registered physician, if he relied on such a justification. (Pub. Sts., c. 214, § 12.) This applies to cases where the absence of a license is made part of a description of the offence. (Commonwealth *v.* Kelly, 10 Cush. 69; Commonwealth *v.* Tuttle, 12 Cush. 502; Commonwealth *v.* Barnes, 138 Mass. 152; Commonwealth *v.* McCarthy, 141 Mass. 420.)

3. Proof that the defendant acted either as a physician or surgeon was sufficient to support the complaint, which charged him with holding himself out as a physician and surgeon. There is but one offence, and that may be committed by the defendant's holding himself out as a physician or a surgeon; if the complaint charges that the offence is committed by the defendant's holding himself out both as a physician

and surgeon, the whole offence is proved if he is shown to have held himself out as either. (Commonwealth *v.* Dolan, 121 Mass. 374.)

4. The ruling that, if the defendant held himself out as an eye specialist, he held himself out as "one who devoted himself to a branch of the healing art which is the profession of the physician and surgeon," and that "if the defendant held himself out as an eye specialist, he held himself out as a physician and surgeon within the meaning of the statute," was correct.

New trial ordered.

COMMONWEALTH *v.* MADDALINA DELLA-RUSSO.

The complaint against Della-Russo, a midwife, was that she held herself out as a practitioner of medicine; and that she practised medicine unlawfully. In the lower court, Suffolk County, William J. Forsaith, justice, she was adjudged guilty on both counts. An appeal was taken and the case was tried in the superior court, December term, 1904. Verdict, guilty on both counts. The contention of the defendant's counsel was that in holding herself out as a midwife she did not hold herself out as a practitioner of medicine, and that in her practice she attended only normal cases of labor, and in so doing she acted in the capacity of a nurse only.

Robert O. Harris, justice, charged the jury as follows: —

In the consideration of this case, it is well for the jury in the beginning to start upon their deliberations with a well-defined idea of what the issue is. This complaint charges the defendant in two counts; first, with holding herself out as a practitioner of medicine; second, as having practised medicine. The statute under which we are proceeding provides that, "Whoever, not being lawfully authorized to practise medicine within this commonwealth and registered as aforesaid, holds himself out as a practitioner of medicine, or practises or attempts to practise medicine in any of its branches," shall be subject to a certain penalty. This statute, enacted in 1894, may be said to be a re-enactment, in a little different shape and with wider scope, of laws which had been on the statute books of this commonwealth for many years. Under the old law there arose the question which has been raised in this case, as to whether it is necessary that a person should hold himself out to practise medicine generally in order to come within the purport of the statute. Under the early statute, in 1835, Chief Justice Shaw of the supreme court rendered an opinion as follows: —

The first question for the court is whether, upon the facts agreed, the defendant can be held to be engaged in the practice of physic or surgery. It appears that he professes and practises bone setting and reducing sprains, swellings and contractions of the sinews, by friction and fomentations; but no other department of the curing art. By bone setting we understand the relief afforded as well in cases of disloca-

tion as in those of fracture. The court are of the opinion that this brings him within the meaning of the statute as one who practises physic or surgery. We think it not necessary for one to profess to practise generally, either as a physician or surgeon, to bring him within the operation of this statute, but that it extends to any one engaging in practice in a distinct department of either profession, and that the defendant's practice forms a considerable department in the practice of surgery.[1]

That is to say, if one holds himself out to practise or practises in any line of endeavor which comes within the territory which belongs to medicine, he comes under this act, although he may follow a specialty.

But this precise question as to whether midwifery is included within the statute has been directly decided in another Commonwealth, under a statute very similar in terms to ours. The case was a complaint against a woman for practising midwifery. The supreme court of that State said: —

It appeared from the proof that the defendant held herself out as a midwife and practised in that capacity. It is urged this is not a violation of the act. We think very clearly it is. Midwifery is an important department of medicine, and is so recognized by the act. The law-making power of the State has enacted that "No person shall practise medicine in any of its departments in this State without the qualifications required by this act." The validity of such a law is not denied, but it is urged only that the defendant had not practised medicine within the meaning of the act. It needs no argument to show the importance of obstetrics as a department of medicine, nor the necessity that those who assume to practise in that department should possess due knowledge and skill. The welfare of their patients is certainly within the purview of the law, no less than in other departments, where, in many instances, at least, even less care and skill may be essential, and where the consequence of ignorance and unskillfulness may be less unfortunate.[2]

Under the rulings in these cases to which I have referred, and under the law as I understand it, I shall have to instruct you that as a matter of law one who undertakes to practise midwifery is one who is undertaking to practise medicine. The issue in this case is, therefore, whether this defendant has undertaken to practise as midwife. If so, she is within the language of the act, because she has undertaken to practise medicine, or a branch thereof.

The question, then, in this case narrows itself down to just what this defendant did. She claims that she did not hold herself out to practise in any other way than as a mere nurse; and that she assumed no responsibilities in anything that she did in any case other than those of an ordinary trained or skilled nurse. And upon that issue you have to consider the evidence in the case. If all she did was to act simply as a nurse, acting under somebody else's directions, and doing only those things which a mere nurse ordinarily does, and assuming no responsibility for anything excepting that she should do the things well as a nurse, then she is not guilty under this complaint. If, however, while calling herself a nurse she actually assumed the function of a physician, and

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[1] Hewitt v. Charier, 16 Pickering, 353. [2] People v. Arendt, 60 Ill. App. 89.

advertised herself as being competent to perform the duties of an ordinary physician, and was engaged upon that understanding, then you will be warranted in finding her guilty.

OPINION OF THE ATTORNEY-GENERAL RELATIVE TO THE EXAMINATION OF APPLICANTS UNABLE TO WRITE IN ENGLISH.

OFFICE OF THE ATTORNEY-GENERAL, BOSTON, Feb. 13, 1906.

EDWIN B. HARVEY, M.D., *Secretary, Board of Registration in Medicine.*

DEAR SIR: — I beg to acknowledge the receipt of your favor of the 9th. Your Board requests the opinion of the Attorney-General as to the legality of conducting examinations of applicants for registration in other than the English language, provided that the applicant offers to pay for the services of a translator to translate his written papers into English.

Revised Laws, chapter 76, section 7, provides that —

> Examinations shall be wholly or in part in writing in the English language, shall be of a scientific and practical character, shall include the subjects of anatomy, surgery, physiology, pathology, obstetrics, gynecology, practice of medicine and hygiene, and shall be sufficiently thorough to test the applicant's fitness to practise medicine.

The question raised is, whether an examination in writing in some language other than English, the examination papers being translated by an interpreter at the expense of the applicant, is in compliance with the requirements of this statute.

The Legislature evidently intended that all persons permitted to practise medicine in this Commonwealth should have some knowledge of the English language. An examination in writing in the English language is, therefore, a test of the general qualifications of the applicant, as distinguished from his strictly technical qualifications. The statutes contemplate that each applicant shall show both general and technical qualifications. Whether or not a person who is unable to write English ought to be permitted to practise medicine in this Commonwealth, where English is the language commonly employed, is not for me to determine. It is clear, however, that there are many reasons which make it desirable that a person practising medicine should have some familiarity with English, and that a requirement of some knowledge of that language is not unreasonable. The natural meaning of the statute is that papers shall be written in English, and no reason appears why the

construction should be strained to give the words some other meaning. If this interpretation seems to work hardship, it may be noted that the Board has considerable discretion as to how large a part of the examination shall be in writing.

I am of the opinion that examinations must be, at least in part, in writing in the English language, not only when they come to the attention of the examining Board, but even when they leave the hands of the persons examined. I am therefore of the opinion that the suggested procedure is not permissible.

Very truly yours, DANA MALONE,
Attorney-General.

OPINION OF ATTORNEY-GENERAL RELATIVE TO THE PROPER INTERPRETATION OF CERTAIN PROVISIONS OF THE LAW.

OFFICE OF THE ATTORNEY-GENERAL, BOSTON, Dec. 18, 1907.

EDWIN B. HARVEY, M.D., *Secretary, Board of Registration in Medicine.*

DEAR SIR: — The Board of Registration in Medicine desires my opinion "as to the intent or meaning of the latter part of section 9, chapter 76 of the Revised Laws, beginning with the word *nor* in the seventeenth line."

The section above referred to provides as follows: —

The provisions of the eight preceding sections shall not be held to discriminate against any particular school or system of medicine, to prohibit medical or surgical service in a case of emergency, or to prohibit the domestic administration of family remedies. They shall not apply to a commissioned medical officer of the United States army, navy or marine hospital service in the performance of his official duty, . . . nor to registered pharmacists in prescribing gratuitously, osteopathists, pharmacists, clairvoyants, or persons practising hypnotism, magnetic healing, mind cure, massage, Christian science or cosmopathic method of healing, if they do not violate any of the provisions of section eight.

Section 8 provides that —

Whoever, not being lawfully authorized to practise medicine within this commonwealth and registered as aforesaid, holds himself out as a practitioner of medicine, or practises or attempts to practise medicine in any of its branches, or whoever practises medicine or surgery under a false or assumed name, or under a name other than that by which he is registered, or whoever personates another practitioner of a like or different name, shall, for each offence, be punished by a fine of not less than one hundred nor more than five hundred dollars, or by imprisonment for three months, or by both such fine and imprisonment. In a case in which a provision of this or the preceding section has been violated, the person who committed the violation shall not recover compensation for services rendered.

The preceding seven sections provide for the establishment of a Board of Registration in Medicine (section 1), for its meetings and organization (section 2), and for the examination and registration of physicians and surgeons (sections 3–7).

I am of the opinion that the meaning of the clause of section 9 to which the inquiry of the Board is directed is that an osteopathist may practise osteopathy so long as he does not hold himself out as a practitioner of medicine, or does not practise or attempt to practise medicine in any of its branches, or does not violate any of the other penal provisions of section 8.

The Board further inquires: —

Should an osteopathist, so called, or a hypnotist display to public view a business sign whereon he designates himself Dr., or Doctor, or Physician, or make use of these or any other title in a manner, or under such conditions or circumstances, or in such connection that it may serve as an announcement or indication of a readiness to engage in the practice of treating diseases of the human body, would he be justly liable to prosecution and conviction under the provisions of section 8 of the said chapter?

This inquiry raises a question of fact rather than of law. If the sign or title is such as to lead the public to believe the osteopathist or hypnotist to be a practitioner of medicine, it would be a violation of section 8 and therefore would not be sanctioned by section 9. The question is in each case whether the acts of the practitioner or osteopathist are sufficient to constitute holding such person out as a practitioner of medicine, and this is a pure question of fact, to be determined upon the evidence obtainable in such case.

Very truly yours, DANA MALONE,
Attorney-General.

COMMONWEALTH *v.* PORN.

This is a case in which a midwife in Gardner was accused of practising medicine without registration. In the municipal court she was found guilty and sentenced to pay a fine of one hundred dollars. In the superior court she was also found guilty, but exceptions to the rulings of Judge Aiken, before whom the case was tried, were allowed, which, in October of this year, were heard by the supreme court and overruled. The opinion handed down by Mr. Justice Rugg is as follows: —

This is a complaint charging that the defendant "did practise medicine" and did "hold herself out as a practitioner of medicine" contrary to Revised Laws, chapter 76, section 8.

After the case was first heard by us (see Mass. Reports, vol. 194) the de-

fendant was again tried in the superior court upon an agreed statement of facts, the substance of which was that at the time mentioned in the complaint, and for some years prior, the defendant held herself out as a midwife and practised midwifery, but did not claim to be a general practitioner of medicine, nor was she lawfully authorized to practise medicine as provided by Revised Laws, chapter 76, section 3. She delivered many women in childbirth for compensation, and carried with her to patients the usual obstetrical instruments, which she used rarely on occasions of emergency, but never if a physician could be called in time. She used six printed prescriptions or formulas in treating her patients, which contained directions for their application, and the purposes for which they were used, as follows: "For vaginal douche," "for post-partum hemorrhage," "to prevent purulent ophthalmia in the new-born," "for after-pains," "for uterine inertia" and "for painful hemorrhoids or piles." She used no other prescriptions or formulas. She was a trained nurse of experience and was a graduate of the Chicago Midwife Institute, from which she received a diploma which stated that she had received theoretical and practical instruction in the art of midwifery for a period of six months, and was declared a graduated midwife. Upon these facts the superior court ruled that the jury would be authorized to find the defendant guilty, and the defendant's first exception relates to this ruling. When the facts are undisputed, it is generally a question of law whether they constitute a violation of the statute. (Commonwealth *v.* Porn, 194 Mass.)

Both medical and popular lexicographers define midwife as a female obstetrician, and midwifery as the practice of obstetrics.

Revised Laws, chapter 76, section 7, mentions obstetrics as one of the subjects of examination for the purpose of testing an applicant's fitness to "practise medicine." This goes far toward showing that obstetrics is a branch of the practice of medicine. It requires no discussion to demonstrate that, when in addition to ordinary assistance in the normal cases of childbirth there is the occasional use of obstetrical instruments, and a habit of prescribing for the conditions described in the printed formulas which the defendant carried, such a course of conduct constitutes the practice of medicine in one of its branches. Although childbirth is not a disease, but a normal function of women, yet the practice of medicine does not appertain exclusively to disease, and obstetrics, as a matter of common knowledge, has long been treated as a highly important branch of the science of medicine. In Higgins *v.* McCabe, 126 Mass., it is intimated that treatment of eyes of the infant (for which one of the prescriptions of the defendant was employed) is not within the duties of midwifery. In view of all the agreed facts, there was no error in submitting the case to the jury.

The defendant also offered expert evidence to prove that the practice of the defendant, as shown in the agreed facts, was not the practice of medicine in any of its branches, and that the conduct of the defendant was not holding herself out as a practitioner of medicine This offer of evidence was excluded, against the objection and exception of the defendant.

The former decision of this case said that expert medical evidence was admissible to prove "what a midwife does or is expected to do as such, so that the court may see whether her acts or any of them are regarded as

the practice of medicine in any of its branches. . . . Whether upon such evidence it would appear that the ministrations of a midwife are those of a physician, or rather of an attendant nurse and helper, would ordinarily be a question of fact, or, if the facts were not in dispute, a question of law." (194 Mass.) At the present trial the facts were agreed. All that the defendant sought to show was that these facts in the opinion of experts did not constitute the practice of medicine. But as the facts were not in dispute, within the former decision, the question was not one for expert evidence but for the court. Moreover, on all the facts shown as to the use of prescriptions and the pains they were stated to alleviate, and the use of obstetrical instruments, as well as attendance and service at childbirth by the defendant, it would be contrary to the plain intent of the statute and flying in the face of the common use of words to permit experts to testify that the language employed in the statute did not comprehend the acts confessedly performed by the defendant. We are far from saying that it would not be within the power of the Legislature to separate, by a line of statutory demarcation, the work of the midwife from that of the practitioner of medicine. The statute now under consideration does not make such separation. Whatever hardship there may be upon the defendant, who is a woman of good character and reputation, as shown by the agreed facts, comes from the scope of the statute.

The defendant contends that the statute as thus construed is unconstitutional. Its validity cannot be questioned on this ground. The maintenance of a high standard of professional qualifications for physicians is of vital concern to the public health, and reasonable regulations to this end do not contravene any provision of the State or Federal Constitution.

Exceptions overruled.